

AMENDED IN ASSEMBLY MAY 29, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1610**

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**Introduced by Assembly Member ~~Ortiz~~ Members Ortiz and  
Alby**

**(Coauthors: Assembly Members Alquist, Campbell, Davis,  
Honda, Martinez, Pacheco, Washington, Wayne, and  
Wildman)**

May 20, 1997

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An act to amend Section 45125 of, *and to add Section 45125.1 to*, the Education Code, relating to school employees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, as amended, Ortiz. School employees.

(1) Existing law requires the governing board of a school district to require each person to be employed, or employed, in a position not requiring certification qualifications to submit fingerprint cards by a local public law enforcement agency, requires that agency to transmit the cards to the Department of Justice, and requires the Department of Justice to ascertain whether the applicant or employee has been arrested or convicted of any crime and to furnish all information of which it has a record and which pertains to the person whose fingerprints were transmitted. Existing law authorizes the exemption from these provisions of substitute and temporary employees, employed for less than a school year *and specified school districts*.

This bill would ~~prohibit that exemption~~ remove those exemptions, thereby imposing a state-mandated local program. The bill would prohibit the governing board of a school district from employing a person in a position not requiring certification until the Department of Justice completes its obligations regarding the arrest and conviction information and would require the Department of Justice to complete those obligations within ~~2 days~~ 3 working days once the department implements an electronic fingerprinting system, as specified. The bill would require the governing board of each school district to report, as specified, to the Department of Justice whether or not a criminal background check has been completed on each employee.

This bill would also require employees of any entity that has a contract with a school district to provide specified services to submit or have submitted 2 sets of fingerprints to the Department of Justice if the employees are to have any contact with pupils. The bill would prohibit an entity having a contract with a school district to provide specified services from permitting an employee to come in contact with pupils if it is ascertained that the employee has been convicted of a violent or serious felony, as defined.

(2) This bill would provide that it will become operative only if AB 1612 of the 1997–98 Regular Session is enacted.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~(3)–~~

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *This act shall be known and may be cited*  
2 *as the "Michelle Montoya School Safety Act."*

3 SEC. 2. Section 45125 of the Education Code is  
4 amended to read:

5 45125. (a) The governing board of any school district  
6 shall require each person to be employed in a position not  
7 requiring certification qualifications to have two 8" x 8"  
8 fingerprint cards bearing the legible rolled and flat  
9 impressions of the person's fingerprints together with a  
10 personal description of the applicant prepared by a local  
11 public law enforcement agency having jurisdiction in the  
12 area of the school district, which agency shall transmit the  
13 cards, together with the fee hereinafter specified, to the  
14 Department of Justice; except that any district, or  
15 districts with a common board, may process the  
16 fingerprint cards if the district so elects. "Local public law  
17 enforcement agency" as used herein includes any school  
18 district and as used in Section 45126 requires the  
19 Department of Justice to provide to any school district,  
20 upon application, information pertaining only to  
21 applicants for employment by the district, including  
22 applicants who are employees of another district.

23 (b) Upon receiving the identification cards, the  
24 Department of Justice shall ascertain ~~within two days~~  
25 whether the applicant has been arrested or convicted of  
26 any crime insofar as that fact can be ascertained from  
27 information available to the department and forward the  
28 information to the local public law enforcement agency  
29 submitting the applicant's fingerprints at the earliest  
30 possible date. *Upon implementation of an electronic*  
31 *fingerprinting system with terminals located statewide*  
32 *and managed by the Department of Justice, the*  
33 *Department of Justice shall ascertain the information*  
34 *required pursuant to this subdivision within three*  
35 *working days. If the Department of Justice cannot*

1 *ascertain the information required pursuant to this*  
2 *subdivision within three working days, the department*  
3 *shall notify the school district that it cannot so ascertain*  
4 *the required information. This notification shall be*  
5 *delivered by telephone and shall be confirmed in writing*  
6 *and delivered to the school district by first-class mail. If*  
7 *a school district is notified by the Department of Justice*  
8 *that it cannot ascertain the required information about a*  
9 *person, the school district may not employ that person*  
10 *until the Department of Justice ascertains that*  
11 *information. At its discretion, the Department of Justice*  
12 *may forward one copy of the fingerprint cards submitted*  
13 *to any other bureau of investigation it may deem*  
14 *necessary in order to verify any record of previous arrests*  
15 *or convictions of the applicant or employee.*

16 (c) The governing board of a school district shall not  
17 employ a person until the Department of Justice  
18 completes its obligations as set forth in this section and  
19 Sections 45125.5 and 45126.

20 (d) The governing board of each district shall forward  
21 a request to the Department of Justice indicating the  
22 number of current employees who have not completed  
23 the requirements of this section. The Department of  
24 Justice shall direct when the cards are to be forwarded to  
25 it for processing which in no event shall be later than ~~two~~  
26 ~~years~~ 30 days from the date of ~~enactment~~ *the amendment*  
27 *of this section by Assembly Bill 1610 of the 1997-98*  
28 *Regular Session.* Districts that have previously submitted  
29 identification cards for current employees to either the  
30 Department of Justice or the Federal Bureau of  
31 Investigation shall not be required to further implement  
32 the provisions of this section as it applies to those  
33 employees.

34 (e) A plea or verdict of guilty or a finding of guilt by  
35 a court in a trial without a jury or forfeiture of bail is  
36 deemed to be a conviction within the meaning of this  
37 section, irrespective of a subsequent order under the  
38 provisions of Section 1203.4 of the Penal Code allowing  
39 the withdrawal of the plea of guilty and entering of a plea

1 of not guilty, or setting aside the verdict of guilty, or  
2 dismissing the accusations or information.

3 (f) The governing board shall provide the means  
4 whereby the identification cards may be completed and  
5 shall charge a fee determined by the Department of  
6 Justice to be sufficient to reimburse the department for  
7 the costs incurred in processing the application. The  
8 amount of the fee shall be forwarded to the Department  
9 of Justice, with two copies of applicant's fingerprint cards.  
10 The governing board may collect an additional fee not to  
11 exceed two dollars (\$2) payable to the local public law  
12 enforcement agency taking the fingerprints and  
13 completing the data on the fingerprint cards. The  
14 additional fees shall be transmitted to the city or county  
15 treasury. If an applicant is subsequently hired by the  
16 board within 30 days of the application, the fee may be  
17 reimbursed to the applicant. Funds not reimbursed  
18 applicants shall be credited to the general fund of the  
19 district. If the fingerprint cards forwarded to the  
20 Department of Justice are those of a person already in the  
21 employ of the governing board, the district shall pay the  
22 fee required by this section, which fee shall be a proper  
23 charge against the general fund of the district, and no fee  
24 shall be charged the employee.

25 ~~(g) Substitute and temporary employees, employed~~  
26 ~~for less than a school year, may not be exempted from~~  
27 ~~these provisions.~~

28 ~~(h) The provisions of this section shall not apply to a~~  
29 ~~district, or districts with a common board, which has an~~  
30 ~~average daily attendance of 400,000 or greater, or to a~~  
31 ~~school district wholly within a city and county, unless the~~  
32 ~~governing board of such district or districts, by rule,~~  
33 ~~provides for adherence to this section.~~

34 ~~(g) This section applies to substitute and temporary~~  
35 ~~employees regardless of length of employment.~~

36 ~~(i) The governing board of each school district shall~~  
37 ~~annually on September 30 submit to the Department of~~  
38 ~~Justice a list of all its employees for the prior school year~~  
39 ~~and shall indicate whether or not a criminal background~~

1 check pursuant to this section has been completed on  
2 each employee.

3 ~~SEC. 2.~~

4 SEC. 3. Section 45125.1 is added to the Education  
5 Code, to read:

6 45125.1. (a) If the employees of any entity that has a  
7 contract with a school district, as defined in Section  
8 41302.5, to provide any of the following or similar services  
9 may have any contact with pupils, those employees shall  
10 have two sets of fingerprints of the employee prepared by  
11 a law enforcement agency on a fingerprint card  
12 authorized by the Department of Justice and shall submit  
13 or have submitted the fingerprints together with a fee  
14 determined by the Department of Justice to be sufficient  
15 to reimburse the department for its costs incurred in  
16 processing the application:

17 (1) Janitorial.

18 (2) Administrative.

19 (3) Landscape.

20 (4) Transportation.

21 (5) Food-related.

22 (b) The Department of Justice shall ascertain whether  
23 the individual whose fingerprints were submitted to it  
24 pursuant to subdivision (a) has been arrested or  
25 convicted of any crime insofar as that fact can be  
26 ascertained from information available to the  
27 department. Upon implementation of an electronic  
28 fingerprinting system with terminals located statewide  
29 and managed by the Department of Justice, the  
30 department shall ascertain the information required  
31 pursuant to this section within three working days. When  
32 the Department of Justice ascertains that an individual  
33 whose fingerprints were submitted to it pursuant to  
34 subdivision (a) has a pending criminal proceeding for a  
35 violent or serious felony as defined in Section 45122.1 or  
36 has been convicted of a violent or serious felony as  
37 defined in Section 45122.1, the department shall notify  
38 the employer designated by the individual of the criminal  
39 information pertaining to the individual. The notification

1 *shall be delivered by telephone and shall be confirmed in*  
2 *writing and delivered to the employer by first-class mail.*

3 *(c) An entity having a contract as specified in*  
4 *subdivision (a) shall not permit an employee to come in*  
5 *contact with pupils until the Department of Justice has*  
6 *ascertained that the employee has not been convicted of*  
7 *a violent or serious felony as defined in Section 45122.1.*

8 *(d) An entity having a contract as specified in*  
9 *subdivision (a) shall certify in writing to the governing*  
10 *board of the school district that none of its employees who*  
11 *may come in contact with pupils have been convicted of*  
12 *a violent or serious felony as defined in Section 45122.1.*  
13 *The entity shall provide a list of the names of its*  
14 *employees who may come in contact with pupils to the*  
15 *governing board of the school district which shall provide*  
16 *relevant lists of employee names to the appropriate*  
17 *schools within its jurisdiction.*

18 *SEC. 4. This act shall become operative only if*  
19 *Assembly Bill 1612 of the 1997–98 Regular Session is*  
20 *enacted.*

21 *SEC. 5. Notwithstanding Section 17610 of the*  
22 *Government Code, if the Commission on State Mandates*  
23 *determines that this act contains costs mandated by the*  
24 *state, reimbursement to local agencies and school*  
25 *districts for those costs shall be made pursuant to Part 7*  
26 *(commencing with Section 17500) of Division 4 of Title*  
27 *2 of the Government Code. If the statewide cost of the*  
28 *claim for reimbursement does not exceed one million*  
29 *dollars (\$1,000,000), reimbursement shall be made from*  
30 *the State Mandates Claims Fund.*

31 *Notwithstanding Section 17580 of the Government*  
32 *Code, unless otherwise specified, the provisions of this act*  
33 *shall become operative on the same date that the act*  
34 *takes effect pursuant to the California Constitution.*

35 ~~*SEC. 3.*~~

36 *SEC. 6. This act is an urgency statute necessary for the*  
37 *immediate preservation of the public peace, health, or*  
38 *safety within the meaning of Article IV of the*  
39 *Constitution and shall go into immediate effect. The facts*  
40 *constituting the necessity are:*

1     Because of the recent death of Michelle Montoya and  
2     in order to preserve the safety of other children at school,  
3     it is necessary for this act to take effect immediately.

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